

## **Millersville Board of Commissioners Agenda**

**Tuesday, October 19th, 2021 at 5:30 P.M.  
at the Millersville City Hall**

1. Call to Order.
2. Invocation and Pledge of Allegiance
3. Approval of Minutes of September 21st, 2021 Regular Commission Meeting.
4. Approval of the September 2021 Financial Report.
5. Review Bids for Slaters Creek Stabilization Project.
6. **Public Hearing on Ordinance 21-764** to Amend 2021-22 Budget by \$200,000 for Professional and Engineering Design Services for the Louisville Highway (US31 W) Pedestrian Improvement Project.
  - a. Open Public Hearing for comments on Ordinance 21-764
  - b. Close Public Hearing on Ordinance 21-764
7. **Second Reading on Ordinance 21-764** to Amend 2021-22 Budget by \$200,000 for Professional and Engineering Design Services for the Louisville Highway (US31 W) Pedestrian Improvement Project.
8. **Public Hearing on Ordinance 21-765** an Ordinance of the City of Millersville to grant the non-exclusive right to Cumberland Electric Membership Corporation to install a cable system for a period of 10 years and providing compensation to the city.
  - a. Open Public Hearing for comments on Ordinance 21-765
  - b. Close Public Hearing on Ordinance 21-765
9. **Second Reading on Ordinance 21-765** an Ordinance of the City of Millersville to grant the non-exclusive right to Cumberland Electric Membership Corporation to install a cable system for a period of 10 years and providing compensation to the city.
10. **Second Reading on Ordinance 21-766** to Amend Ordinance 12-607 Personnel Policy to revise and modify the City of Millersville's Policy and Procedures Manual. Public Hearing not required.
11. Citizen Comments.
12. Commissioner Comments.
13. City Manager Comments.
14. Adjournment

**Review and approve Bid for Slaters Creek Stabilization Project**

\*\*\* BID TABULATION \*\*\*

**Slaters Creek Stream Bank Stabilization**

**City of Millersville**

1246 Louisville Hwy  
Millersville, TN 37072

Rebid Opening Date/Time: September 22, 2021, 1:00 p.m. CDT

Contractor City & State	Total Base Bid	TN Contractor's License No.	Bid Bond Amount	Bid Security Information
<b>Long Branch Construction, LLC</b> Greenbrier, TN	\$71,505.13 * Indicates corrected amount	76296 MU	5%	Long Branch Check no. 1027 in amount of \$3,770.07
<b>Adams Contracting, LLC</b> Lexington, KY	\$136,737.50	68891 MU	5%	Nationwide Mutual Insurance Company
<b>Ron Mabry Construction</b> Columbia, TN	\$154,681.20 * Indicates corrected amount	53491 BC	5%	Mabry Const. Check no. 1024 in amount of \$7,734.00

I do hereby certify this to be a true and correct representation of the bids received for this project.

Brian H. Whitaker, P.E.  
TN License No. 111675





October 14, 2021

Mr. Steve Collie  
City Manager  
City of Millersville  
1246 Louisville Highway  
Millersville, TN 37072

RE: **Recommendation of Award & Certified Bid Tabulation**  
Slaters Creek Stream Bank Stabilization  
City of Millersville  
OHM Project No. 0058200020

Dear Mr. Collie:

On September 22, 2021 at 1:00 p.m. CDT, at the City of Millersville, three (3) sealed bids were received and opened in the presence of City officials and OHM for the Slaters Creek Stream Bank Stabilization project. Long Branch Construction, LLC was the apparent low bidder with an apparent total bid amount read at \$75,401.50. However, after their bid was entered into the bid tab spreadsheet, errors were discovered in their math. The official total low bid amount is **\$71,505.13** as shown on the attached certified bid tabulation.

We have completed our review of the bid documents and find them to be acceptable. We have verified that the contractor met and supplied all required documentation as prescribed in the bid documents. We have worked with Jonathan Evans in the past and find his work satisfactory.

Based on our findings, we recommend that the City consider awarding this contract in the amount of **\$71,505.13** to Long Branch Construction, LLC as the successful, responsive low bidder. We understand this selection will be decided by the City. If the City concurs with our recommendation, we will notify the contractor of award and transmit the contract documents to them for execution and attachment of bonds and insurance.

If you have any questions or require additional information, please feel free to contact this office.

Sincerely,  
OHM Advisors

A handwritten signature in blue ink, appearing to read "Brian Whitaker".

Brian Whitaker, P.E.  
Principal

Enclosure: as stated

**Public Hearing on Ordinance 21-764 to Amend 2021-22 Budget by \$200,000 for Professional and Engineering Design Services for the Louisville Highway (US31W) Pedestrian Improvement Project.**

- a. Open Public Hearing for comments on Ordinance 21-764
- b. Close Public Hearing on Ordinance 21-764

**Second Reading on Ordinance 21-764 to Amend 2021-22 Budget by \$200,000 for Professional and Engineering Design Services for the Louisville Highway (US31W) Pedestrian Improvement Project.**

**CITY OF MILLERSVILLE, TENNESSEE  
ORDINANCE 21-764**

**AN ORDINANCE TO AMEND ORDINANCE 21-758, THE 2021-2022 FISCAL YEAR BUDGET, FOR REVENUES AND EXPENSES RELATED TO THE SIDEWALK PROJECT.**

**WHEREAS**, the City of Millersville adopted the 2021-2022 Fiscal Year Budget by passage of Ordinance 21-758 on June 22, 2021; and

**WHEREAS**, the City has since identified revenues and/or expenditures that were not included as part of the original budget; and

**WHEREAS**, the Governing Body finds it necessary to amend the General Fund and Street Fund for Professional and Engineering Services related to the Sidewalk Project in the amount of \$200,000; and

**WHEREAS**, a budget amendment is necessary to the Appropriation Ordinance in order to reflect the actual finances of the City; and

**WHEREAS**, Tennessee Code Annotated Title 6, Chapter 56, Section 208 allows the governing body to amend the annual budget ordinance in the same manner as any other ordinance may be amended.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MILLERSVILLE, TENNESSEE** that Ordinance 21-758, the 2021-2022 Fiscal Year Budget, shall be amended as follows:

**SECTION 2 - GENERAL FUND:**

**APPROPRIATIONS:**

Appropriations proposed to Transfer to Street will increase by \$200,000 and change from \$200,000 to \$400,000. The Total Appropriations in the General Fund will change from \$4,042,321 to \$4,242,321.

**SECTION 3 - ESTIMATED FUND BALANCE:** The Estimated Fund Balance for the General Fund will decrease by \$200,000 and change from \$1,603,756 to \$1,403,756.

**SECTION 1 - STREET FUND:**

**REVENUES:**

Revenues proposed to Transfer from General Fund will increase by \$200,000 and change from \$200,000 to \$400,000. Total Street Fund Revenues will change from \$445,500 to \$645,500 and the Total Available Funds will change from \$600,238 to \$800,238.

**SECTION 2 - STREET FUND:**

**APPROPRIATIONS:**

Appropriations proposed for Capital Improvements will increase by \$200,000 and change from \$390,000 to \$590,000. The Total Appropriations will change from \$466,770 to \$666,770.

**THIS ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON PASSAGE, THE  
PUBLIC WELFARE REQUIRING IT.**

Passed First Reading: \_\_\_\_\_

Public Hearing: \_\_\_\_\_

Passed Second Reading: \_\_\_\_\_

**BOARD OF COMMISSIONERS**

By: \_\_\_\_\_  
Timothy Lassiter, Mayor

Attest:

Approved as to Form and Legality:

By: \_\_\_\_\_  
Holly Murphy, City Recorder

By: \_\_\_\_\_  
Bruce Oldham, City Attorney

**Ordinance 21-764****2021-22 Budget Amendment  
General Fund**

REVENUE SOURCE		Amount Budgeted	Projected year-end	Increase (+) Decrease (-)	
10-3710	From Fund Balance - General	\$673,419.00	\$873,419.00	\$200,000.00	
Total Revenue Source: General Fund		\$673,419.00	\$873,419.00	\$200,000.00	\$200,000.00

**OPERATING EXPENSES:**

Account #	Budget Line Item	Amount Budgeted	Projected year-end	Increase (+) Decrease (-)	
10-410-7002	Transfer to Street	\$200,000.00	\$400,000.00	\$200,000.00	
Total Expense: General Fund		\$200,000.00	\$400,000.00	\$200,000.00	\$200,000.00
Expense - Revenue = Net Effect				\$0.00	\$0.00

---

**2021-22 Budget Amendment  
Street Fund****REVENUE SOURCE**

Account #	Budget Line Item	Amount Budgeted	Projected year-end	Increase (+) Decrease (-)	
30-3710	Transfer From General Fund	\$200,000.00	\$400,000.00	\$200,000.00	
Total Revenue Source: Street Fund		\$200,000.00	\$400,000.00	\$200,000.00	\$200,000.00

**OPERATING EXPENSES:**

		Amount Budgeted	Projected year-end	Increase (+) Decrease (-)	
30-431-6025	Streetscape Capital Project	\$200,000.00	\$400,000.00	\$200,000.00	
Total Expenses: Street Fund		\$200,000.00	\$400,000.00	\$200,000.00	\$200,000.00
Expense - Revenue = Net Effect				\$0.00	\$0.00



**ORDINANCE 21-758**

Amendment#1

Ord 21-764

**AN ORDINANCE OF THE CITY OF MILLERSVILLE, TENNESSEE,  
ADOPTING THE ANNUAL BUDGET AND TAX RATE FOR THE FISCAL YEAR BEGINNING  
JULY 1, 2021 THROUGH JUNE 30, 2022**

- Whereas, *Tennessee Code Annotated* Title 9 Chapter 1 Section 116 requires that all funds of the State of Tennessee and all its political subdivisions shall first be appropriated before being expended and that only funds that are available shall be appropriated; and
- Whereas, the Municipal Budget Law of 1982 requires that the governing body of each municipality adopt and operate under an annual budget ordinance presenting a financial plan with at least the information required by that state statute, that no municipality may expend any moneys regardless of the source except in accordance with a budget ordinance and that the governing body shall not make any appropriation in excess of estimated available funds; and
- Whereas, the governing body has published the annual operating budget and budgetary comparisons of the proposed budget with the prior year (actual) and the current year (estimated) in a newspaper of general circulation not less than ten (10) days prior to the meeting where the governing body will consider final passage of the budget.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF MILLERSVILLE, TENNESSEE AS FOLLOWS:

SECTION 1: That the governing body estimates anticipated revenues of the municipality from all sources to be as follows:

<b>General Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>
Local Taxes	\$ 1,896,793	\$ 2,030,316	\$ 1,945,317
Licenses & Permits	\$ 51,303	\$ 91,150	\$ 100,500
Intergovernmental Revenue	\$ 714,286	\$ 1,055,286	\$ 851,493
Charges for Services	\$ 25,465	\$ 4,000	\$ 30,000
Fines and Forfeitures	\$ 328,618	\$ 232,600	\$ 343,000
Miscellaneous Revenue	\$ 129,576	\$ 126,052	\$ 98,592
Other Financing Sources	\$ 3,071,132	\$ -	\$ -
Total Revenue	\$ 6,217,173	\$ 3,539,404	\$ 3,368,902
Fund Balance	\$ 1,751,301	\$2,987,632	\$ 2,277,175
Total Available Funds	\$7,968,474	\$6,527,036	\$5,646,077

<b>State Street Aid Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>	<b>Amd#1 Ord 21-764</b>
State Gas Tax Revenue	\$ 227,864	\$ 224,500	\$ 235,000	
Miscellaneous Revenue	\$ 9,726	\$ 26,731	\$ 10,500	
Transfer from General Fund	\$ -	\$ -	\$ 200,000	+\$200,000-\$400,000
Total Revenue	\$ 237,590	\$ 251,231	\$ 445,500	\$645,500
Fund Balance	\$ 303,062	\$ 381,249	\$ 154,738	
Total Available Funds	\$ 540,652	\$ 632,480	\$ 600,238	\$800,238

<b>Drug Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>
Drug Fines & Revenue	\$ 48,510	\$ 21,220	\$ 25,520
Total Revenue	\$ 48,510	\$ 21,220	\$ 25,520
Fund Balance	\$ 5,619	\$ 16,736	\$ 21,184
Total Available Funds	\$ 54,129	\$ 37,956	\$ 46,704

<b>Solid Waste Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>
Service Fees	\$ 461,657	\$ 487,000	\$ 486,000
Miscellaneous Revenue	\$ 1,228	\$ 2,400	\$ 3,500
Total Revenue	\$ 462,885	\$ 489,400	\$ 489,500
Fund Balance	\$ 352,711	\$ 366,055	\$ 429,289
Total Available Funds	\$ 815,596	\$ 855,455	\$ 918,789

<b>Stormwater Utility Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>
Stormwater Utility Fees	\$ 155,859	\$ 156,715	\$ 155,000
Miscellaneous Revenue	\$ 1,216	\$ 3,230	\$ 6,630
Total Revenue	\$ 157,075	\$ 159,945	\$ 161,630
Fund Balance	\$ 177,747	\$ 141,985	\$ 193,339
Total Available Funds	\$ 334,822	\$ 301,930	\$ 354,969

<b>Sewer Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>
Sewer User Fees	\$ 1,196,699	\$ 1,220,800	\$ 1,270,000
Sewer Tap Fees	\$ 10,675	\$ 23,000	\$ 30,000
Other Fees	\$ 49,178	\$ 48,000	\$ 35,000
Non-Operating Revenue	\$ 3,567	\$ 3,988	\$ 2,500
Other Financing Sources	\$ 1,372	\$ -	\$ -
Total Revenue	\$ 1,261,491	\$ 1,295,788	\$ 1,337,500

SECTION 2: That the governing body appropriates from these anticipated revenues and unexpended and unencumbered funds as follows:

<b>General Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>	<b>Amd#1 Ord 21-764</b>
General Government (inc. Dev&Codes)	\$ 2,929,227	\$ 2,138,939	\$ 995,232	+200,000=\$400,000
Police Department (& City Court)	\$ 1,392,897	\$ 1,420,213	\$ 1,636,630	
Fire Department	\$ 350,280	\$ 234,809	\$ 698,125	
Parks and Recreation	\$ 123,387	\$ 82,701	\$ 138,051	
Debt Service	\$ 185,051	\$ 373,199	\$ 374,283	
Transfer to Street	\$ -	\$ -	\$ 200,000	
Capital	\$ -	\$ -	\$ -	
Total Appropriations	\$ 4,980,842	\$ 4,249,861	\$ 4,042,321	+200,000=\$4,242,321

<b>State Street Aid Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>	<b>Amd#1 Ord 21-764</b>
Street Expenditures	\$ 78,403	\$ 64,023	\$ 76,770	+200,000=\$590,000
Capital	\$ 81,000	\$ 413,719	\$ 390,000	
Total Appropriations	\$ 159,403	\$ 477,742	\$ 466,770	+200,000=\$666,770

<b>Drug Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>
Police Dept Drug Expenditures	\$ 37,393	\$ 16,772	\$ 25,520
Total Appropriations	\$ 37,393	\$ 16,772	\$ 25,520

<b>Solid Waste Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>
Operating Expenditures	\$ 449,541	\$ 426,166	\$ 468,816
Capital	\$ -	\$ -	\$ 58,500
Total Appropriations	\$ 449,541	\$ 426,166	\$ 527,316

<b>Stormwater Utility Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>
Operating Expenses	\$ 136,209	\$ 105,876	\$ 126,798
Capital	\$ 56,628	\$ 2,715	\$ 95,000
Total Appropriations	\$ 192,837	\$ 108,591	\$ 221,798

<b>Sewer Fund</b>	<b>FY 2019-20 Actual</b>	<b>FY 2020-21 Estimated</b>	<b>FY 2021-22 Proposed</b>
Operating Expenses	\$ 1,042,032	\$ 1,082,042	\$ 1,158,838
Non-Operating Expenses	\$ 29,200	\$ -	\$ -
Debt Service	\$ 591	\$ 22,656	\$ 22,656
Capital	\$ 107,351	\$ 148,307	\$ 215,000
Total Appropriations	\$ 1,179,174	\$ 1,253,005	\$ 1,396,494

SECTION 3. At the end of the 2022 fiscal year, the governing body estimates fund balances/deficits as follows:

		<b>Am#1 Ord 21-764</b>
General Fund	\$ 1,603,756	-200,000-\$1,403,756
State Street Aid Fund	\$ 133,468	
Drug Fund	\$ 21,184	
Solid Waste Fund	\$ 391,473	
Stormwater Fund	\$ 133,171	
Sewer Fund	\$ -	

SECTION 4. That the governing body recognizes that the municipality has bonded and other indebtedness as follows:

<b>Bonded or Other Indebtedness</b>	<b>Principal (current yr)</b>	<b>Interest (current yr)</b>	<b>Principal outstanding @ 6/30/22</b>
Bonds	\$ 110,000	\$ 78,725	\$ 2,545,000
State Revolving Loan	\$ 21,180	\$ 1,128	\$ 389,722
Loan Agreements	\$ 143,480	\$ 9,898	\$ 247,637
Capital Leases	\$ -	\$ -	\$ -
Other Debt	\$ -	\$ -	\$ -
Total	\$ 274,660	\$ 89,751	\$ 3,182,359

SECTION 5. No appropriation listed above may be exceeded without an amendment of the budget ordinance as required by the Municipal Budget Law of 1982 T.C.A. Section 6-56-208. In addition, no appropriation may be made in excess of available funds except to provide for an actual emergency threatening the health, property or lives of the inhabitants of the municipality and declared by a two-thirds (2/3) vote of at least a quorum of the governing body in accordance with Section 6-56-205 of the *Tennessee Code Annotated*.

SECTION 6. Money may be transferred from one appropriation to another in the same fund only by appropriate ordinance by the governing body, subject to such limitations and procedures as it may describe as allowed by Section 6-56-209 of the *Tennessee Code Annotated*. Any resulting transfers shall be reported to the governing body at its next regular meeting and entered into the minutes.

SECTION 7. A detailed financial plan will be attached to this budget and become part of this budget ordinance.

SECTION 8. If for any reason a budget ordinance is not adopted prior to the beginning of the next fiscal year, the appropriations in this budget ordinance shall become the appropriations for the next fiscal until the adoption of the new budget ordinance in accordance with Section 6-56-210 of the *Tennessee Code Annotated*, provided sufficient revenues are being collected to support the continuing appropriations. Approval of the Director of the Division of Local Finance for a continuation budget will be requested if any indebtedness is outstanding.

SECTION 9. There is hereby levied a property tax of \$1.00 per \$100 of assessed value on all real and personal property in Robertson County.

There is hereby levied a property tax of \$1.00 per \$100 of assessed value on all real and personal property in Sumner County.

SECTION 10. All unencumbered balances of appropriations remaining at the end of the fiscal year shall lapse and revert to the respective fund balances.

SECTION 11. This ordinance shall take effect on July 1, 2021, the public welfare requiring it.

Passed First Reading:

---

Public Hearing:

---

Passed Second and Final Reading:

---

BOARD OF COMMISSIONERS

\_\_\_\_\_  
Timothy F. Lassiter, Mayor

Attest:

\_\_\_\_\_  
Holly L. Murphy, City Recorder

Approved as to Form and Legality:

\_\_\_\_\_  
Bruce Oldham, City Attorney



April 1, 2021

Mr. Steve Collie  
City of Millersville  
1246 Louisville Highway  
Millersville, TN 37072

**RE: Proposal for Professional Services**  
**Louisville Highway (US31W) Pedestrian Improvements - Engineering Design**  
**TDOT PIN: 125189.00**  
**TIP Project Number: 2017-56-046**  
**Federal Project Number: TAP-M-NH-41(24)**

Dear Mr. Collie:

Thank you for the opportunity to submit this proposal for professional services to the City of Millersville (Client). This letter presents our understanding of the project and our proposed scope of services, time schedule, fee, and "Standard Terms and Conditions".

#### **Project Description**

The Louisville Highway Pedestrian Improvements project consists of a proposed 10' wide multimodal pathway on the west side of Louisville Highway and a proposed 5' wide sidewalk on the east side of Louisville Highway. The 10' wide multimodal pathway's termini on the north and south ends are the Millersville City Hall and the Millersville Public Library, respectively. The 5' sidewalk will terminate at Slater's Creek Road on the north end and at the Millersville Public Library on the south end. This project is currently in the Preliminary Engineering Phase. Upon the State's approval of the NEPA (Environmental) document, a Notice to Proceed with the Design Phase will be issued. During the Design Phase, plans will be prepared by OHM Advisors and submitted to the State for review. In accordance with the State of Tennessee's Local Government Guidelines Manual, the Design Phase requires a Preliminary Plans review, Preliminary Right of Way Plans review, and a Final Right of Way Plans Review. After the Final Right of Way Plans are approved, the State will issue a Notice to Proceed with the Right of Way Phase. Professional services that must take place during the Right of Way Phase are not included in the scope of this proposal, but they will be included in a future proposal for professional services.

#### **Scope of Services**

- 1) OHM Advisors will prepare the Louisville Highway Pedestrian Improvements construction plans (Preliminary Plans, Preliminary Right of Way Plans, and Final Right of Way Plans) that are required in order for the State of Tennessee to issue a Notice to Proceed with the Right of Way Phase. The construction plans will include the proposed 10' multimodal pathway and 5' sidewalk described in the section above. Hydraulic and hydrologic calculations (stormwater conveyance design and hydraulic analysis for both pedestrian bridges) will be necessary and are included in this scope of work. At the bridge crossings, hydraulic modeling will be used to determine the existing and proposed water surface elevations for the 50, 100 and 500-year recurrence interval storms. It is anticipated that the proposed bridge structures will be single span prefabricated truss structures to span the streambanks and have little to no impact on the water crossing. These plans will be created in accordance with the State of Tennessee's Local Government Guidelines Manual. OHM Advisors will address comments from the State of Tennessee's reviews of these plans. This scope of work will continue up to the point that a Notice to Proceed with the Right of Way Phase is issued by the State.

- 2) OHM Advisors will prepare and submit applications to TDEC for two ARAP permits (one at each proposed pedestrian bridge), one Notice of Intent (NOI), and one Stormwater Pollution Prevention Plan (SWPPP). OHM Advisors will address comments from TDEC in order to gain the State's approval for these permits. This scope of work may be performed before or after a Notice to Proceed with the Right of Way Phase is issued by the State.
- 3) OHM Advisors will coordinate and conduct tasks that are required by the State of Tennessee's Local Government Guidelines Manual including coordination of utility relocations with utility owners, public involvement coordination, completion of TDOT Checklist Form 5-3 with each plan submittal, a preliminary construction estimate to submit with the Final Right of Way Plans, and coordination of a license agreement with TDOT's Excess Land Office. This scope of work will continue up to the point that a Notice to Proceed with the Right of Way Phase is issued by the State.
- 4) OHM Advisors will conduct additional professional survey services as needed during engineering design work for this project. It is anticipated that revisions during the design process may require additional survey within the project area. This scope of work will continue up to the point that a Notice to Proceed with the Right of Way Phase is issued by the State.
- 5) A geotechnical study for the two proposed pedestrian bridges will be conducted by a subconsultant contracted by OHM Advisors.

#### Additional Services

The Client may request additional services that are not included with the original Scope of Services. OHM Advisors will provide an Amendment to this Letter Proposal outlining the specific Scope of Services to be added. Compensation and schedule for the Additional Services will be detailed within the Amendment. Additional services that are not included in the scope of this proposal for professional engineering services are as follows:

- 1) Final construction plans and bid documents - to be completed in a later phase
- 2) Traffic impact study or traffic analysis
- 3) Traffic signal design
- 4) Easement and right of way acquisition legal documents - to be completed in a later phase
- 5) Landscape Plan
- 6) Lighting/Photometric Plan

#### Time Schedule

OHM Advisors is available to commence with this assignment within 10 days upon approval and execution of this Letter Proposal. We anticipate that our effort will span a period of 270 days.

#### COVID-19 Disclaimer

As we submit this proposal, the world is in the midst of the COVID-19 health crisis and we believe there is an increased risk for potential schedule impacts. The Time Schedule is based on operating in a normal environment. Our team, like the Client, is adjusting our workflow logistics and our teams are working remotely in an effective manner. However, be aware that schedule impacts from elements such as field services delays, required resource agencies, and key staff illness that neither OHM Advisors nor the Client have control over are more likely in the current environment. We will communicate proactively, clearly identify project issues as they arise, and work with the Client's staff to develop a plan to deal with unforeseen issues.

#### Fee

We will perform the above services on an hourly basis based on the attached Hourly Rate Schedule (Exhibit 1), plus reimbursable expenses. **The estimated cost of services is \$200,000.** We will notify you in advance if we become aware of unforeseen conditions impacting the estimated cost of services. We will not exceed the \$200,000 estimate without the Client's prior approval.

**Contract Terms and Conditions**

Exhibit 2 (attached), "Standard Terms and Conditions", is incorporated into this proposal by reference.


**Acceptance**

If this proposal is acceptable to you, a signature on the enclosed copy of this letter and initials on the contract terms and conditions will serve as our authorization to proceed.

Thank you for giving us the opportunity to be of service. We look forward to working with you on this project. This proposal is valid for 30 days from the date of this letter.

**Orchard, Hiltz, & McCliment, Inc.**  
CONSULTANT

**City of Millersville**  
CLIENT

	(Signature)	_____
Steve Chizek, P.E.	(Name)	_____
Principal	(Title)	_____
April 1, 2021	(Date)	_____

Attachments: Exhibit 1 – Hourly Rate Schedule  
Exhibit 2 – Standard Terms and Conditions

**Public Hearing on Ordinance 21-765** an Ordinance of the City of Millersville to grant the non-exclusive right to Cumberland Electric Membership Corporation to install a cable system for a period of 10 years and providing compensation to the city.

- a. Open Public Hearing for comments on Ordinance 21-765
- b. Close Public Hearing on Ordinance 21-765

**Second Reading on Ordinance 21-765** an Ordinance of the City of Millersville to grant the non-exclusive right to Cumberland Electric Membership Corporation to install a cable system for a period of 10 years and providing compensation to the city.



## **CITY OF MILLERSVILLE**

### **ORDINANCE 21-765**

**AN ORDINANCE GRANTING TO THE GRANTEE, THE NON-EXCLUSIVE RIGHT TO ERECT, MAINTAIN AND OPERATE IN, UNDER, OVER, ALONG, ACROSS THE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, AND EASEMENTS DEDICATED FOR COMPATIBLE USES AND OTHER PUBLIC PLACES IN THE CITY OF MILLERSVILLE, TENNESSEE, AND THE SUBSEQUENT ADDITIONS THERETO, TOWERS, FIBERS, CABLES AND ANCILLARY FACILITIES FOR THE PURPOSE OF CONSTRUCTING, OPERATING, MAINTAINING AND REPAIRING A CABLE SYSTEM, AS DEFINED HEREIN, FOR A PERIOD OF TEN (10) YEARS, REGULATING THE SAME AND PROVIDING COMPENSATION TO THE TOWN.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE **CITY OF MILLERSVILLE, TENNESSEE, USA** THAT:

This Franchise Agreement ("Agreement") is between the City of Millersville hereinafter referred to as the "Franchising Authority", and Cumberland Connect, a corporation duly organized and validly existing under the laws of the State of Tennessee, hereinafter referred to as the "Grantee," and further defined in **Subsection 1.1.L** below.

The Franchising Authority hereby acknowledges that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future video programming distribution related needs of the Service Area, as defined in **Subsection 1.1.V** below, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Agreement with the Grantee for the construction and operation of a broadband video distribution system on the terms set forth herein.

#### **SECTION 1** **Definition of Terms**

**1.1 Terms.** For the purpose of this Agreement, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. "Additional Franchise" is a franchise other than the Franchise, as defined in **Subsection 1.1.K** below, granted to any third-party, including any renewal of an already existing cable franchise, for the construction, operation or maintenance of a cable system pursuant to the Cable Act, as defined in **Section 1.1.E**, below.

B. "Additional Franchise Agreement" is an agreement by which the Franchising Authority grants an Additional Franchise.

D. "Board/Council" shall mean the City Council of Millersville, Tennessee.

E. "Cable Act" is Title VI of the Cable Act of 1984, as amended.

F. "Cable Services" shall mean: (i) the one-way transmission to Subscribers, as defined in **Subsection 1.1.X**, below, of (a) video programming or (b) another programming service and (ii) action(s) taken by Subscribers, which may be required for the selection or use of such video programming or other programming service.

G. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Services, which shall include video programming, and which is provided to multiple Subscribers within the Service Area.

H. "Convertor Box" shall mean the device, whether it be a convertor box, set-top box, or terminal, that resides at Subscribers' locations and through which Subscribers receive the Cable Services.

I. "Effective Date" shall mean \_\_\_\_\_, 2020.

J. "FCC" shall mean the Federal Communications Commission, or successor governmental entity thereto.

K. "Franchise" shall mean the non-exclusive rights granted to Grantee pursuant to this Agreement to construct and operate a Cable System along the Public Ways, as defined in **Subsection 1.1.U** below, within all or a specified area in the Service Area.

L. "Grantee" means Cumberland Connect, or the lawful successor, transferee, or assignee thereof.

M. "Gross Revenues" shall mean all cash compensation or revenues of any kind or nature received directly or indirectly by the Grantee, its subsidiaries or parent, arising from, attributable to, or in any way derived from the provision of Cable Services by the Grantee within the Service Area, as long as all such Gross Revenues are in accordance with generally accepted accounting principles. Gross Revenues include, but are not limited to, monthly fees charged to Subscribers for Basic Cable Service; monthly fees charged to Subscribers for any optional, premium, per-channel or per-program service; monthly fees charged to Subscribers for any tier of Cable Service other than Basic Cable Service; fees for installation, disconnection, and reconnection of Cable Service; late fees assessed for any Subscriber payment obligation; change of service fees; leased channel fees; franchise fees collected from Subscribers, Convertor Box rental or sales fees; programming production and/or studio equipment rental fees; advertising revenues; and revenues derived by the Grantee from home shopping channel sales to Subscribers. Gross Revenues shall not include: (i) any tax, fee, or assessment of general applicability, (ii) unrecovered bad debt, and (iii) revenues received from the provision of internet service over the Cable System unless and until such time as Federal law or the FCC's rules and regulations determine that internet service shall be designated a Cable Service and included in Gross Revenues for the purpose of calculating

franchise fees. Advertising and home shopping revenues shall be allocated on a pro-rata basis based on the number of total Subscribers versus the Subscribers residing within the Service Area, provided the revenues cannot be calculated on a per-Subscriber basis. Gross Revenues shall be the basis for computing any franchise fee.

N. "Installation" shall mean the connection of the Cable System from feeder fiber, cable, or other distribution mechanism to Converter Boxes.

O. "OTT" shall mean an Over-the-Top video programming service whose owner and/or operator was granted a franchise by the Franchising Authority to provide programming to the Service Area, regardless of the distribution facilities used by the owner and/or operator.

P. "OVS" shall mean an Open Video System, as certified by the FCC pursuant to 47 U.S.C. § 573, as may be amended, whose owner and/or operator was granted a franchise by the Franchising Authority to provide video programming to the Service Area, regardless of the distribution facilities used by the owner and/or operator.

Q. "Person" shall mean an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

R. A "Pole" may refer to any telephone pole, conduit and/or other facility which is owned by the Franchising Authority upon which the Grantee may affix the Cable Systems facilities.

S. "Public Building" shall mean police and fire stations and administration buildings of the Franchising Authority located within the Service Area.

T. "Public School" shall mean any school at any educational level operated within the Service Area by any public, private or parochial school system, but limited to, the equivalent of elementary schools, junior high schools, middle schools and high schools.

U. "Public Way" shall mean the surface of, and the space above and below, each of the following, which are dedicated to the public and maintained under public authority or by others and located within the Service Area: streets, roadways, highways, freeways, parkways, bridges, land paths, boulevards, avenues, lanes, courts, ways, alleys, sidewalks, circles, drives, easements, rights-of-way, and similar public ways and extensions and additions thereto, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area.

V. "Service Area" means the present boundaries of the Franchising Authority and shall include any additions thereto by annexation or other legal means, subject to the exceptions specifically stated herein.

W. "State" shall mean the State of Tennessee.

X. "Standard Installation" is defined as Installation of the Cable Service that is within 125 feet from the nearest connection point to the Cable System.

Y. "Subscriber" means a Person who, with the Grantee's express permission, lawfully receives Cable Service from the Cable System.

## **SECTION 2**

### **Grant of Franchise**

**2.1 Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area. The Grantee is authorized for that purpose to erect, install, or construct; repair, replace, or reconstruct; and operate, maintain, or retain such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes in, on, over, under, upon, across, or along any Public Way.

**2.2 Additional Franchises.**

A. **Additional Franchise Granted in More Favorable Terms.** If, following the Effective Date, the Franchising Authority exercises its right to grant an Additional Franchise to a third-party and the Grantee believes that the Additional Franchise Agreement created therefrom bestows benefits and imposes burdens on such third-party, which on balance, are materially more advantageous to such third-party than the benefits bestowed and the burdens imposed on the Grantee by this Agreement, the Grantee may at any time request that the Franchising Authority compare the Additional Franchise Agreement and the Agreement and make a determination as to the Grantee's belief. If the Franchising Authority determines that the Grantee's belief is correct, the parties shall renegotiate the terms and conditions of this Agreement as provided for in this Subsection. If the Franchising Authority is required by an existing ordinance, regulation, or State or federal law, including the Cable Act, to provide advance written public notice of any request for an Additional Franchise from a third-party, the Franchising Authority shall make such notice and simultaneously provide the Grantee with a copy of the proposed request.

B. **Procedure for Review of Additional Franchise Agreement.** The Franchising Authority shall have ten (10) days after receipt of a request from the Grantee to issue a written determination as to its comparison of the Additional Franchise Agreement and this Agreement. If the Franchising Authority determines that the Additional Franchise Agreement is more favorable to the third-party, negotiations on a new Agreement or an amendment to the current Agreement shall commence within three (3) business days of the Grantee's receipt of the determination. The focus of such negotiations shall be to create overall economic, technical and operational parity between the franchisees. If the Grantee disagrees with the Franchising Authority's decision, the Grantee may request that the Franchising Authority reconsider within three (3) business days of receipt of the determination.

C. **Factors for Determination.** In making a determination under this **Section 2**, the Franchising Authority will consider factors including, but not limited to: (i) the term of the franchise; (ii) the franchise fee to be paid by each franchisee; (iii) the number and density of dwelling units to be served; (iv) differences in construction, operational maintenance requirements

and the costs thereof; (v) differences in required system characteristics, including state-of-the-art requirements; (vi) differences in service obligations, including the provision of access to public, educational and government ("PEG") channels and institutional service requirements; (vii) differences in permitted cable service fees and charges; and (viii) such other factors that are relevant to an inquiry into the overall economic, technical and operational parity of the agreements.

**2.3 Police Powers and Conflicts with Franchise.** The Grantee acknowledges that its rights hereunder are subject to the police power of the Franchising Authority to adopt and enforce general franchises necessary for the safety and welfare of the public. The Grantee shall comply with all applicable general laws and regulations enacted by the Franchising Authority pursuant to such power. Subject to its lawful police powers, the Franchising Authority may not, by franchise or otherwise, alter any of the Grantee's material rights, benefits, obligations or duties as specified in this Agreement. In the event of a conflict between any franchise and this Agreement, the terms and conditions of this Agreement shall control, provided; however, that the Grantee agrees that it is subject to the lawful police power of the Franchising Authority.

**2.4 Other Ordinances.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Agreement. In the event of a conflict between any ordinance and this Agreement, this Agreement shall control.

**2.5 Other Authorizations.** The Franchising Authority shall not permit any Person to provide services similar to those provided by the Grantee within the Service Area without the Person first securing an Additional Franchise. The Franchising Authority shall not grant any Additional Franchises or other authorizations to third-parties, including franchises or authorizations granted to OVS or OTT providers, to provide services similar to those provided by the Grantee within the Service Area on terms and/or conditions more favorable or less burdensome than those granted to the Grantee as set forth herein.

### **SECTION 3** **Franchise Renewal**

#### **3.1 Procedures for Renewal.**

A. The Franchise shall be for a term of ten (10) years, commencing on the Effective Date of this Franchise as set forth below subject to the Grantee's acceptance by countersigning where indicated below. This Franchise shall be automatically extended for an additional term of ten (10) years, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.

B. In addition to the procedures set forth in the Cable Act and federal law, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments

shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this Subsection 3.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal law the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

**3.2 Assessment of Needs.** In addition to the procedures set forth in **Section 626(a)** of the Cable Act, the Franchising Authority agrees to notify the Grantee of all assessments the Franchising Authority has made regarding (i) the cable-related needs and interests of the community within the Service Area and (ii) the performance of the Grantee under the Agreement and the Franchise. The Franchising Authority further agrees that any such assessments shall be provided to the Grantee promptly so that the Grantee may timely provide a response under **Section 626(b)** of the Cable Act to complete renewal of the Franchise prior to expiration of its term.

**3.4 Terms Consistent with Law.** The Franchising Authority and the Grantee consider the terms set forth in this Subsection to be consistent with the express provisions of **Section 626** of the Cable Act.

**3.5 Consideration of Additional Franchise Agreements and Authorizations.** The Franchising Authority shall take into account any previously granted Additional Franchise Agreements or authorizations, when seeking to impose increased obligations upon the Grantee in any renewal of this Agreement or the Franchise. The proposed increased obligations shall not be more burdensome and/or less favorable than those contained in any such Additional Franchise Agreements or authorizations.

## **SECTION 4**

### **Insurance and Indemnification**

**4.1 Insurance Requirements.** The Grantee shall obtain and/or maintain, at its own cost, insurance that meets the coverage requirements set forth in this Subsection. Such insurance shall be in full force and effect during the term of the Agreement and the Franchise and any renewal periods of the same. The Franchising Authority shall be designated as an additional insured and such insurance shall be noncancelable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this Subsection. The insurance shall be in the amounts as follows:

Worker's Compensation:	Statutory Limits
Commercial General Liability:	\$1,000,000 per occurrence
Combined Single Liability (C.S.L.):	\$2,000,000 General Aggregate

Auto Liability including coverage on all owned, non-owned hired autos:	\$1,000,000 C.S.L.
Umbrella Liability:	\$1,000,000 per occurrence C.S.L.

**4.2 Indemnification.** The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of the Cable System provided that the Franchising Authority shall give the Grantee written notice within ten (10) days of the Franchising Authority's receipt of a claim or action pursuant to this Subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority, its officers, members, agents or employees or for the Franchising Authority's use of the Cable System, including the use of any PEG channels.

## **SECTION 5**

### **Service Obligations**

**5.1 No Discrimination.** The Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. The Grantee shall comply at all times with all other applicable federal, State and local laws and regulations.

**5.2 Privacy.** The Grantee shall comply with all applicable federal or State laws and regulations regarding the privacy rights of Subscribers.

**5.3 Rates.** The Grantee shall establish rates that are nondiscriminatory within the same general class or tier of Subscribers. Nothing contained herein shall prohibit the Grantee from offering: (i) discounts to commercial and multiple family dwelling Subscribers billed on a bulk basis; (ii) promotional discounts; (iii) reduced Installation rates for Subscribers who have multiple services; and (iv) discounted rates in those portions of the Service Area subject to competition from other video programming providers.

## **SECTION 6**

### **Service Availability**

**6.1 Service Area.** The Grantee shall make the Cable Service available to every dwelling unit within the Service Area so that the Cable Services, unless specifically stated hereon, is available to areas with a minimum density of at least ten (10) dwelling units per quarter cable mile within three (3) years from the Effective Date. The Grantee may elect to provide Cable Service to areas not meeting the density standards referenced in this Subsection. The build-out requirements in this Subsection do not apply to areas within the Service Area that are currently being served by another Person pursuant to an Additional Franchise Agreement. The Grantee shall Install the Cable Service at its published rates.

**6.2 Service to New or Previously Un-served Single Family Dwellings.** The Grantee shall offer Cable Service to all new homes or previously un-served single dwelling units located within 125 feet of the Grantee's feeder cable or broadband distribution facilities at its published rates for Standard Installation.

**6.3 Service to New Subdivisions.** Where the Franchising Authority has created or established a new subdivision for dwelling units within the Service Area after the Effective Date, the Grantee shall make the Cable Service available to these dwelling units if the following conditions are met: (i) the dwelling units must have building foundations in place; (ii) electric and/or telephone facilities have been installed to provide electric or telephone service to the dwelling units; (iii) the dwelling units are located within 125 feet of the Grantee's existing Cable Service distribution facilities; (iv) the minimum density of the new subdivision is at least ten (10) dwelling units per quarter cable mile; and (v) the Grantee is not required to pay an entrance fee or private right-of-way fee to provide Cable Service to the subdivision. If all of these conditions are met, the Grantee shall extend Cable Service to such a dwelling unit within six (6) months of a written request by a resident of the new subdivision with authority to contract for cable services for the dwelling unit. The Franchising Authority shall use its best efforts to advise the Grantee when a new subdivision has been approved and permitted by the Franchising Authority for construction.

**6.4 Service to Annexed Areas.** The Grantee shall offer Cable Services to any area described in any annexation franchise passed after the Effective Date within one (1) year after the effective date of such annexation franchise. The area delineated in the annexation shall be included with, and become part of the definition of, the Service Area upon the Installation of the Cable Service within the annexation area. The Grantee shall not be required to offer service to the annexation area if the Grantee or a Person already provides video programming services to the annexation area or if the density of homes is less than that required in **Section 6.1**.

**6.5 Additional Service.** The Grantee may elect to offer Cable Service to areas within the Service Area not meeting the standards set forth in this **Section 6**. The Grantee may impose an additional charge in excess of its Standard Installation charge to any Subscriber for any Installation that requires the Grantee to exceed the standards set forth in this **Section 6**. This additional charge shall be computed on a time plus materials basis to be calculated on that portion of the Installation that is above and beyond 125 feet for the nearest connection point to the Cable System.

**6.6 New Development Underground.** In cases of new construction or property development within the Service Area where utilities will be placed underground, the Franchising Authority shall require any property owner or developer to: (i) provide notices of such construction to the Grantee and (ii) allow the Grantee to require installation of facilities for the availability of Cable Service, into any trench created for the underground utilities as conditions of the Franchising Authority issuing a permit to authorize the proposed new construction or property development. Specifically, such permit shall require the property owner or developer to notify the Grantee in writing: (y) thirty (30) days prior to the start of construction or development and (ii) at least two (2) weeks prior to the time that the property owner or developer shall make the open trench available for installation of conduit, pedestals, vaults, and/or laterals. The Grantee and applicable property owner or developer shall agree upon the specifications or construction schedule as needed for trenching prior to the open trenching date. Costs of trenching and easements required to bring



Cable Services to the property or development shall be borne by the developer or property owner. The Franchising Authority shall use its best efforts to advise the Grantee when a permit has been approved by the Franchising Authority for construction or development that provides for the installation of underground utilities.

## **SECTION 7**

### **Construction and Technical Standards**

**7.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and the National Electric Safety Code.

**7.2 Construction Standards and Requirements.** All of the Grantee's plant and equipment, including but not limited to the antenna site, head-end or comparable broadband facility or equipment; distribution system; towers; house connections, structures, Poles, wire, cable, coaxial cable, and fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**7.3 Safety.** The Grantee shall at all times employ ordinary care and commonly accepted methods and practices in the video distribution industry in the installation and maintenance, including but not limited to Installations, of the Cable System's facilities and equipment necessary to provide the Cable Services. All such work shall be performed in substantial accordance with generally applicable federal, State, and local regulations and the National Electric Safety Code.

**7.4 Network Technical Requirement.** The Cable System shall be operated so that it is capable of continuous twenty-four (24) hour daily operation, capable of complying with all applicable federal technical standards, as they may be amended from time to time, and operated in such a manner as to comply with all applicable FCC rules and regulations.

**7.5 Performance Monitoring.** Grantee shall test the Cable System as required by the FCC's rules and regulations. The Franchising Authority may require additional tests, full or partial repeat tests, or different test procedures when there is evidence which casts doubt upon the reliability or technical quality of the Cable System on the basis of complaints received from the public or other evidence indicating an unresolved controversy or alleged significant non-compliance with the standards set forth in this Subsection. Such tests will be limited to the particular matter in controversy or the alleged significant non-compliance. The Franchising Authority shall schedule its requests for such tests so as to minimize hardship or inconvenience to the Grantee and to the Subscribers. The Franchising Authority shall not request such testing more than once annually.

## **SECTION 8**

### **Standards of Service**

**8.1 General Conditions.** The Grantee shall have the right to utilize existing Poles and other infrastructure owned by Grantee whenever possible, and shall only construct or install new, different, or additional Poles whether on public property or on privately owned property where it has the authority to do so.

**8.2 Underground Construction.** The Grantee shall be authorized to construct, operate, and maintain its Cable System underground in areas where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services have such

authorization. Nothing contained in this Subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

**8.3 Permits.** The Franchising Authority shall cooperate with the Grantee in granting any permits required for the construction of the Cable System, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Public Ways and that proposed construction shall be done in accordance with this Agreement.

**8.4 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any facilities or Poles placed in any Public Way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such Public Way.

**8.5 Restoration of Public Ways.** If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

**8.7 Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth on or along Public Ways in order to access and maintain the Cable System.

**8.10 Reimbursement of Costs.** If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

**8.11 Emergency Alert System.** Any Emergency Alert System ("EAS") provided by Grantee shall be operated in accordance with FCC regulations. Any use of such EAS by the Franchising Authority will be only in accordance with the applicable State and local plans as approved in accordance with such FCC regulations. Except to the extent expressly prohibited by law, the Franchising Authority will hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including but not limited to reasonable attorneys' fees and costs.

## **SECTION 9** **Service and Rates**

**9.2 Continuity of Service.** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the Cable System, or the Franchising Authority gives notice of intent to terminate or fails to renew the Agreement and this Franchise, the Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted service during such overbuild, rebuild, modification or sale of the Cable System, unless circumstances are beyond the control of the Grantee or are unforeseen or constitute a Force Majeure as discussed in **Section 15.2**. In the event of a change of the Grantee, or in the event a new operator acquires the Cable System, the Grantee shall cooperate with the Franchising Authority and the new grantee or operator in maintaining continuity of service to all Subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System.

**9.3 Customer Service Standards.** The Grantee will comply with the customer service standards promulgated by the FCC in accordance with **Section 632** of the Communications Act for as long as such standards are in effect. Such standards are incorporated herein as **Exhibit A**.

## **SECTION 10** **Franchise Fee**

### **10.1 Franchise Fee.**

A. The Grantee shall pay to the Franchising Authority a franchise fee of three percent (3%) of annual Gross Revenues. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. Grantee shall commence payment of the franchise fee on the first day of the calendar month that is at least thirty (30) days after the Effective Date. The franchise fee payment shall be due quarterly and payable within 60 days after the close of each calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. The Grantee shall keep records for all franchise fee payments for three (3) years.

B. **Limitation on Franchise Fee Audits.** The period of limitation for recovery of any franchise fee payable hereunder shall be in accordance with the appropriate State or federal laws. Any additional amount due to the Franchising Authority shall be paid within thirty (30) days of the Franchising Authority submitting an invoice for such sum, the Grantee may audit the accuracy of its payment of franchise fees to the Franchising Authority. Any amounts overpaid by the Grantee shall be deducted from future franchise fee payments.

## **SECTION 11**

### **Transfer of Franchise**

**11.1 Transfer of Franchise.** The Franchise granted hereunder shall not be sold, transferred, leased or assigned, including but not limited to, by forced or voluntary sale, receivership, or other means without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not acted on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed duly given.

**11.2 Transfer Without Consent Deemed Violation.** Any sale, assignment or transfer of the Franchise or the Agreement occurring without prior approval of the Franchising Authority shall constitute a violation of the Agreement and the Franchise by the Grantee.

**11.3 Transfer to Affiliates.** The foregoing requirements shall not apply to any sale, assignment or transfer to any Person/Entity that is owned or controlled by the Grantee, or any Person/Entity that owns or controls the Grantee. Grantee shall notify the Franchising Authority thirty (30) days prior to any such sale, assignment or transfer.

## **SECTION 12**

### **Books and Records**

**12.1 Reports Required.** The Grantee's schedule of charges, contract or application forms for Cable Service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Franchising Authority upon request.

**12.2 Records Required.** The Grantee shall at all times maintain and make available to the Franchising Authority the following documents within thirty (30) days of a written request, provided however that Franchising Authority may not request documents referenced in **Subsection 12.2** more often than once a year:

(i). A record of all complaints received regarding interruptions or degradation of Cable Service shall be maintained for two (2) years.

(ii). A full and complete set of plans, records and strand maps showing the location of the Cable System.

**12.3 Inspection of Records.** Upon thirty (30) days' advance written notice, the Grantee shall permit any duly authorized representative of the Franchising Authority to examine, during normal business hours on a non-disruptive basis, all records reasonably necessary to ensure the Grantee's compliance with the Agreement and this Franchise. Such notice shall specifically reference the section or subsection of the Agreement that is under review so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. The Grantee shall provide electronic copies of its books and records if available or paper copies if electronic copies are not available. The Grantee shall fully cooperate in making available its records and otherwise assisting in these activities. The Grantee shall not be required to maintain any books and records related to the Grantee's compliance with the terms and conditions of the Franchise longer than three (3) years. The Grantee shall not be required to provide Subscriber information to the Franchising Authority in violation of **Section 631** of the Cable Act. The Franchising Authority agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Franchising Authority aware of such confidentiality. The Grantee may require the Franchising Authority, or any of its employees, agents or representatives who will have access to such information to sign a confidentiality agreement prior to the release of any of this information.

### **SECTION 13** **Community Programming**

**13.1 Service to Schools and Public Buildings.** The Grantee shall offer to install one (1) Converter Box to each Public School and/or Public Building within 125 feet of nearest Cable System connection point and will offer to provide Basic Cable Service and any "expanded" Basic Cable Service tier, if offered, for the term of this Agreement. The Cable Services shall be offered to the Public Schools and Public Buildings. Any such Public School may install, at its expense, such additional Converter Boxes for classroom purposes as it desires, provided that such installation shall not interfere with the operation of the Cable System. The quality and manner of installation of such additional connections at the Public Schools shall be approved by the Grantee prior to installation and shall comply with all local, State and federal laws and regulations. The requirement to provide Cable Services to Public Schools and Public Buildings is subject to the same build-out set forth in **Subsection 6.1**. The Grantee shall not be required to offer Cable Services to Public Schools and Public Buildings that are more than 125 feet from the nearest connection point to the Cable System, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary extension or installation. In accordance with the Federal Communications Commission's Third Report and Order regarding Implementation of Section 621(a)(1) of the Cable Communication Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, Released August 2, 2019, the cost of any installations to Schools and Public Buildings, if requested, shall be deducted against the Franchise Fee identified in Section 10.1 of this Ordinance.

**13.2 Limitations on Use.** The Cable Service provided pursuant to **Subsection 13.1** above shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any improper or inappropriate use of the Cable System or any loss or damage to the Cable System. The Franchising

Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by **Subsection 13.1** above.

## **SECTION 14**

### **Enforcement and Termination of Franchise**

**14.1 Notice of Violation.** In the event that the Franchising Authority believes that the Grantee has not complied with or defaulted on any material term of this Agreement, the Franchising Authority shall informally discuss the matter with the Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of such alleged noncompliance.

**14.2 The Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the notice described in **Subsection 14.1**:

- (i). to respond to the Franchising Authority, contesting the assertion of such noncompliance;
- (ii). to cure such default; or
- (iii). in the event that, by the nature of such default, it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

**14.3 Public Hearing.** In the event that the Grantee fails to respond to the notice described in **Subsection 14.1** pursuant to the procedures set forth in **Subsection 14.2**, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to **Subsection 14.2(ii)** above, the Franchising Authority shall schedule a public hearing to address the alleged non-compliance or default if it intends to continue its investigation. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which shall specify the time, place and purpose of such hearing. The Franchising Authority shall present any evidence of the default at the public hearing and the Grantee shall be provided with equal time to present evidence contrary to that provided by the Franchising Authority or present evidence if the Grantee's attempts to remedy the default.

**14.4 Enforcement.** In the event the Franchising Authority determines that the Grantee is in material default of any provision of the Agreement after the hearing set forth in **Subsection 14.3**, the Franchising Authority may, subject to applicable federal and State law,

- (i). seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- (ii). commence an action at law for monetary damages or seek other equitable relief; or

- (iii). in the case of repeated or ongoing substantial non-compliance with a material term or terms of this Agreement, seek to revoke the Franchise and terminate this Agreement in accordance with **Subsection 14.5**.

#### **14.5 Revocation.**

A. Notice of Intent to Revoke. Prior to revocation of the Franchise and termination of this Agreement, the Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise and terminate this Agreement on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth the exact nature of the noncompliance and include citation to one or more specific instances of substantial noncompliance with a material provision of this Agreement by the Grantee. The Grantee shall have sixty (60) days from such notice to object in writing to the Franchising Authority, state its reasons for such objection, and provide any explanation. If the Franchising Authority is not satisfied with the Grantee's response, it may then seek to revoke the Franchise and terminate this Agreement at a public hearing. The Franchising Authority shall give the Grantee at least twenty (20) days prior written notice of such public hearing, specifying the time and place of such hearing, and stating the Franchising Authority's intent to revoke the Franchise and terminate this Agreement.

B. Revocation Hearing Provisions. At the revocation hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and witnesses to support its position, and question any witnesses presented by the Franchising Authority. After the Grantee has concluded its presentation, the Franchising Authority shall determine whether or not the Franchise shall be revoked, and this Agreement shall be terminated. The revocation hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Franchising Authority shall be made in writing and shall be delivered to the Grantee pursuant to the notice provisions of this Agreement. The Grantee may appeal such determination to a court of competent jurisdiction.

#### **14.6 Conditions of Sale.**

A. If the Grantee's Franchise and this Agreement are lawfully revoked or terminated and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another Person, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in **Section 627** of the Cable Act.

B. The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise and termination of this Agreement, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third-party. The Grantee shall be authorized to continue to operate pursuant to the terms of this Agreement during this period. If the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System during such time, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or State law. It is



further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

C. Upon the termination of this Agreement and revocation of the Franchise, as provided herein, the Grantee shall, upon notice by the Franchising Authority, remove at its own expense the Cable System from all Public Ways. Notwithstanding the foregoing, the Grantee may abandon any property on Public Ways upon written notice to the Franchising Authority. If, within ninety (90) days of the receipt of such notice, the Franchising Authority determines that the safety, appearance, or use of the Public Ways would be adversely affected, the property must be removed by the Grantee by a date reasonably specified by the Franchising Authority, in light of the amount of work to be performed.

**14.7 Good Faith Errors.** The parties agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise or termination of this Agreement for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact to the Subscribers or the Cable Services, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

## **SECTION 15**

### **Miscellaneous Provisions**

**15.1 Compliance with State and Federal Laws.** This Franchise shall be governed by and construed in accordance with Federal law, the laws of the State of Tennessee and the City of Millersville, Tennessee. The Grantee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and any applicable cable ordinance enacted by the Franchising Authority. Notwithstanding any other provisions of this Agreement to the contrary, the Grantee shall at all times comply with all laws and regulations of the State and federal government or any administrative agencies thereof which related to the conduct of the Grantee's business.

**15.2 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by third-party utility providers to service or monitor their utility poles to which portions of the Cable System are attached, as well as unavailability of materials and/or qualified labor to perform the required work.

**15.3 Actions of Parties.** The Franchising Authority and the Grantee shall act in a reasonable, expeditious, and timely manner in regard to any action that is mandated or permitted under the terms hereof. Furthermore, in any instance where the approval or consent is required by one of the parties under the terms hereof, such approval or consent shall not be unreasonably withheld.

**15.4 Entire Agreement.** This Agreement constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements,

whether oral or written. Neither party may unilaterally alter the material rights and obligations set forth in this Agreement, whether through governmental power or otherwise. Any amendments to this Agreement shall be mutually agreed to in writing by the parties.

**15.5 Reservation of Rights.** Acceptance of the terms and conditions of this franchise will not constitute, or be deemed to constitute, a waiver, either express or implied, by the Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Franchising Authority acknowledges that the Grantee reserves all of its rights under applicable Federal and State Constitutions, laws and regulations.

**15.6 Notices.**

A. Unless otherwise expressly agreed between the parties, every notice or response required by this Agreement to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: (i) upon receipt when hand delivered to the other party, (ii) upon receipt when sent certified, registered mail, (iii) within five (5) business days after having been deposited with the United States Postal Service for standard delivery or (iv) or the next business day if sent by express mail or overnight courier.

B. Notices or responses to the Franchising Authority and the Grantee shall be addressed as follows:

if to the Franchising Authority:

Tim Lassiter  
Mayor of Millersville  
1246 Louisville Highway  
Millersville, TN 37072

if to the Grantee:

Cumberland Connect  
Broadband Manager  
1940 Madison Street  
Clarksville TN 37043  
Attn: Mark Cook

C. The Franchising Authority and the Grantee may designate such other address or addresses as those provided in **Subsection 15.6(B)** from time to time by giving notice to the other in the manner provided for in this Subsection.

**15.7 Descriptive Headings.** The captions to Sections and Subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**15.8 Severability.** If any Section, Subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, Subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Agreement.

**15.9 Effective Date.** The Effective Date of this Franchise is the date of final adoption by the Franchising Authority as set forth below subject to the Grantee's acceptance by countersigning where indicated below.

[Signatures on the following page.]

Considered and approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

Franchising Authority:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Grantee:

Cumberland Connect

Signature:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

## **Exhibit A**

### **Section 76.309 FCC Customer Service Obligations**

#### **1. Cable system office hours and telephone availability-**

A. The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

i. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

ii. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

B. The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone availability standards above unless an historical record of complaints indicates a clear failure to comply.

C. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

D. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

#### **2. Installations, outages, and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five (95) percent of the time.:**

A. Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem

B. The "appointment window" alternative for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

C. If a cable operator representative is running later for an appointment with a customer and will not be able to keep the appointment as scheduled, best efforts will be made to contact the customer. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

3. Communications between cable operators and cable subscribers.

A. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

4. Definitions-

A. Normal Business Hours. The terms "normal business hours" means 7:30 a.m. to 4:30 p.m. Monday through Friday excluding holidays.

B. Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

C. Service Interruption. The term "service interruption" means the loss of picture or sound on one or more cable channels.

**Second Reading on Ordinance 21-766** to Amend Ordinance 12-607 Personnel Policy to revise and modify the City of Millersville's Policy and Procedures Manual.

Public Hearing not required.

**CITY OF MILLERSVILLE, TENNESSEE**

**ORDINANCE 21-766**

**AN ORDINANCE TO AMEND ORDINANCE 12-607, PERSONNEL POLICY;  
PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE  
DATE.**

**WHEREAS,** The Board of Commissioners of the City of Millersville review policies and procedures from time to time to ensure that they are correct and up to date; and

**WHEREAS,** some inconsistencies and sections have been identified as in need of amendment.

**THEREFORE, BE IT ORDAINED** by the Board of Commissioners of the City of Millersville, Tennessee that:

**Section 1.** The Millersville Personnel Manual shall be amended with Exhibit "A" hereto attached and made part of the Ordinance:

**Section 2.** This Ordinance shall be effective upon final passage, the public welfare requiring it.

Passed First Reading: \_\_\_\_\_

Public Hearing: \_\_\_\_\_

Passed Second Reading: \_\_\_\_\_

BOARD OF COMMISSIONERS

By: \_\_\_\_\_

Timothy F. Lassiter, Mayor

Attest:

By: \_\_\_\_\_

Holly L. Murphy, City Recorder

Approved as to Form and Legality:

By: \_\_\_\_\_

Bruce Oldham, City Attorney